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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**JOSHUA FRIEDMAN,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**NUTRIBULLET, LLC, AND
TRIBUNE BROADCASTING
COMPANY, LLC,**

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR
DAMAGES**

JURY TRIAL DEMANDED

1. JOSHUA FRIEDMAN ("Plaintiff") brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of NUTRIBULLET, LLC ("Defendant Nutribullet"), and TRIBUNE BROADCASTING COMPANY, LLC. ("Defendant Tribune") in negligently and/or willfully contacting Plaintiff on Plaintiff's cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own

1 acts and experiences, and, as to all other matters, upon information and belief,
2 including investigation conducted by his attorneys.

3 2. The TCPA was designed to prevent calls and text messages like the
4 ones described herein, and to protect the privacy of citizens like Plaintiff.
5 “Voluminous consumer complaints about abuses of telephone technology – for
6 example, computerized calls dispatched to private homes – prompted Congress to
7 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

8 3. In enacting the TCPA, Congress intended to give consumers a choice
9 as to how corporate similar entities may contact them, and made specific findings
10 that “[t]echnologies that might allow consumers to avoid receiving such calls are
11 not universally available, are costly, are unlikely to be enforced, or place an
12 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. In
13 support of this, Congress found that
14

15 [b]anning such automated or prerecorded telephone
16 calls to the home, except when the receiving party
17 consents to receiving the call or when such calls are
18 necessary in an emergency situation affecting the health
19 and safety of the consumer, is the only effective means
20 of protecting telephone consumers from this nuisance
21 and privacy invasion.

22 Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
23 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on
24 TCPA’s purpose).

25 4. Congress also specifically found that “the evidence presented to the
26 Congress indicates that automated or prerecorded calls are a nuisance and an
27 invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also,
28 *Mims*, 132 S. Ct. at 744.

1 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
2 TCPA case regarding calls to a non-debtor similar to this one:

3
4 The Telephone Consumer Protection Act ... is well
5 known for its provisions limiting junk-fax
6 transmissions. A less-litigated part of the Act curtails
7 the use of automated dialers and prerecorded messages
8 to cell phones, whose subscribers often are billed by the
9 minute as soon as the call is answered—and routing a
10 call to voicemail counts as answering the call. An
11 automated call to a landline phone can be an
annoyance; an automated call to a cell phone adds
expense to annoyance.

12 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

13 **JURISDICTION AND VENUE**

14 6. This Court has federal question jurisdiction because this case arises
15 out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs.,*
16 *LLC*, 132 S. Ct. 740 (2012).

17 7. Venue is proper in the United States District Court for the Central
18 District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
19 Defendants are subject to personal jurisdiction in the County of Los Angeles,
20 State of California, and Plaintiff resides within the County of Los Angeles, State
21 of California.

22 **PARTIES**

23 8. Plaintiff is, and at all times mentioned herein was, a citizen and
24 resident of the State of California. Plaintiff is, and at all times mentioned herein
25 was, a “person” as defined by 47 U.S.C. § 153 (39).

26 9. Plaintiff is informed and believes, and thereon alleges, that
27 Defendant Nutribullet is, and at all times mentioned herein was, a corporation
28

1 whose State of Incorporation is California and principal place of business is in the
2 State of California. Defendant Nutribullet, is and at all times mentioned herein
3 was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (39).
4 Plaintiff alleges that at all times relevant herein Defendant Nutribullet conducted
5 business in the State of California and in the County of Los Angeles, and within
6 this judicial district.

7
8 10. Plaintiff is informed and believes, and thereon alleges, that
9 Defendant Tribune is, and at all times mentioned herein was, a corporation whose
10 State of Incorporation is Illinois and principal place of business is in the State of
11 Illinois. Defendant Tribune, is and at all times mentioned herein was, a
12 corporation and is a “person,” as defined by 47 U.S.C. § 153 (39). Plaintiff
13 alleges that at all times relevant herein Defendant Tribune conducted business in
14 the State of California and in the County of Los Angeles, and within this judicial
15 district.

16 17 **FACTUAL ALLEGATIONS**

18 11. Beginning sometime on or around March 09 of 2014, Defendants
19 began to utilize Plaintiff’s cellular telephone number, ending in 5289, in an
20 attempt to solicit Plaintiff’s business by sending unsolicited/unauthorized spam
21 text messages.

22 12. On at least one (1) occasion, that being March 09, 2014, Defendants
23 sent the following text message to Plaintiff’s cellular telephone:

24 **Thanks for supporting the**
25 **L.A. Marathon. Check out**
26 **NutriBullooza at mile 15!**
27 **[http://www.nutribullooza.c](http://www.nutribullooza.com)**
28 **om – Txt STOP2quit, Txt**
HELP4help Msg&Data
rates apply

1
2 13. The text Defendants placed to Plaintiff's cellular telephone was
3 placed via an "automatic telephone dialing system," ("ATDS") as defined by 47
4 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

5 14. This ATDS has the capacity to store or produce telephone numbers
6 to be dialed, using a random or sequential number generator.

7 15. The telephone number that Defendants, or their agents, called was
8 assigned to a cellular telephone service for which Plaintiff incurs a charge for
9 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

10 16. These text messages constituted calls that were not for emergency
11 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

12 17. At no time did Plaintiff provide Defendants or their agents with
13 written prior express consent to receive unsolicited text messages, pursuant to 47
14 U.S.C. § 227 (b)(1)(A).

15 18. These telephone calls by Defendants, or their agents, violated 47
16 U.S.C. § 227(b)(1).

17
18 **CLASS ACTION ALLEGATIONS**

19 19. Plaintiff brings this action on behalf of himself and on behalf of and
20 all others similarly situated ("the Class").

21 20. Plaintiff represents, and is a member of, the Class, consisting of All
22 persons within the United States who received any text message/s from
23 Defendants or their agent/s and/or employee/s to said person's cellular telephone
24 made through the use of any automatic telephone dialing system within the four
25 years prior to the filing of the Complaint.

26 21. Defendants and their employees or agents are excluded from the
27 Class. Plaintiff does not know the number of members in the Class, but believes
28 the Class members number in the thousands, if not more. Thus, this matter

1 should be certified as a Class action to assist in the expeditious litigation of this
2 matter.

3 22. Plaintiff and members of the Class were harmed by the acts of
4 Defendants in at least the following ways: Defendants, either directly or through
5 their agents, illegally contacted Plaintiff and the Class members via their cellular
6 telephones, thereby causing Plaintiff and the Class members to incur certain
7 cellular telephone charges or reduce cellular telephone time for which Plaintiff
8 and the Class members previously paid, and invading the privacy of said Plaintiff
9 and the Class members. Plaintiff and the Class members were damaged thereby.
10

11 23. This suit seeks only damages and injunctive relief for recovery of
12 economic injury on behalf of the Class, and it expressly is not intended to request
13 any recovery for personal injury and claims related thereto. Plaintiff reserves the
14 right to expand the Class definition to seek recovery on behalf of additional
15 persons as warranted as facts are learned in further investigation and discovery.

16 24. The joinder of the Class members is impractical and the disposition
17 of their claims in the Class action will provide substantial benefits both to the
18 parties and to the court. The Class can be identified through Defendants' records
19 or Defendants' agents' records.

20 25. There is a well-defined community of interest in the questions of law
21 and fact involved affecting the parties to be represented. The questions of law
22 and fact to the Class predominate over questions which may affect individual
23 Class members, including the following:

- 24 a) Whether, within the four years prior to the filing of this Complaint,
25 Defendants or their agents placed any calls to the Class (other than a
26 call made for emergency purposes or made with the prior express
27 consent of the called party) to a Class member using any automatic
28

dialing system to any telephone number assigned to a cellular phone service;

- b) Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and
- c) Whether Defendants and their agents should be enjoined from engaging in such conduct in the future.

26. As a person that received autodialed text messages from Defendants via an automated telephone dialing system, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

27. Plaintiff and the members of the Class have all suffered irreparable harm as a result of Defendants' unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendants will likely continue such illegal conduct. Because of the size of the individual Class member's claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.

28. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

29. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendants to comply with federal and California law. The interest of Class members in individually controlling the prosecution of separate claims against Defendants is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely

1 to present significantly fewer difficulties than those presented in many class
2 claims.

3 30. Defendants have acted on grounds generally applicable to the Class,
4 thereby making appropriate final injunctive relief and corresponding declaratory
5 relief with respect to the Class as a whole.
6

7 **FIRST CAUSE OF ACTION**
8 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
9 **PROTECTION ACT**
10 **47 U.S.C. § 227 ET SEQ.**

11 33. Plaintiff incorporates by reference all of the above paragraphs of this
12 Complaint as though fully stated herein.

13 34. The foregoing acts and omissions of Defendants constitute numerous
14 and multiple negligent violations of the TCPA, including but not limited to each
15 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

16 35. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et
17 seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory
18 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

19 36. Plaintiff and the Class are also entitled to and seek injunctive relief
20 prohibiting such conduct in the future.

21 **SECOND CAUSE OF ACTION**
22 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**
23 **CONSUMER PROTECTION ACT**
24 **47 U.S.C. § 227 ET SEQ.**

25 37. Plaintiff incorporates by reference all of the above paragraphs of this
26 Complaint as though fully stated herein.

27 38. The foregoing acts and omissions of Defendants constitute numerous
28 and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et
2 seq.

3 39. As a result of Defendants' knowing and/or willful violations of 47
4 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00
5 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §
6 227(b)(3)(C).

7 40. Plaintiff and the Class are also entitled to and seek injunctive relief
8 prohibiting such conduct in the future.

9
10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
12 Class members the following relief against Defendants:

13
14 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE**
15 **TCPA, 47 U.S.C. § 227 ET SEQ.**

16 41. As a result of Defendants' negligent violations of 47 U.S.C. §
17 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory
18 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

19 42. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
20 such conduct in the future.

21 43. Any other relief the Court may deem just and proper.

22
23 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
24 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

25 44. As a result of Defendants' knowing and/or willful violations of 47
26 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00
27 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §
28 227(b)(3)(C).

1 45. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
2 such conduct in the future.

3 46. Any other relief the Court may deem just and proper.

4 **TRIAL BY JURY**

5 47. Pursuant to the seventh amendment to the Constitution of the United
6 States of America, Plaintiffs are entitled to, and demand, a trial by jury.

7 Respectfully submitted May 01, 2014

8 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
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10
11 By: /s/Todd M. Friedman
12 Todd M. Friedman
13 Law Offices of Todd M. Friedman
14 Attorney for Plaintiff
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